insured had not elected to suffer his policy to lapse. It was also held admissible in view of the custom of the insurance company to allow its members an indulgence of from thirty to sixty days. Evidence was also admitted at the trial that during the negotiations resulting in the policy, defendant's agent frequently represented to the insured that the company would grant from thirty to sixty days of grace, if insured could not meet his premiums promptly when due. This was excepted to as tending to vary the written terms of a contract. *Held*, admissible to show that the company had a custom or course of business with its customers, by which it habitually granted grace. *Aetna Life Insurance Co.* v. *Hartley* (Ky.), 67 S. W. 19.

Per O'Rear, J.:

"It seems to be well settled—or ought to be—that the agent of an insurance company who solicits insurance, takes the application, receives the premium, and delivers the policy may, by his conduct and acts, bind his company by way of waiver of a forfeiture. *Insurance Co.* v. *Spiers*, 87 Ky. 297, 8 S. W. 453; *Insurance Co.* v. *Wilkinson*, 13 Wall. 222, 20 L. Ed. 617. The courts are eager to seize upon any reasonable excuse to avoid an enforcement of such harsh provisions of insurance policies as provide for their forfeiture. Therefore when the agent of the insurer, the one ostensibly having charge of its business in the locality where the insured lives, by his conduct and course of dealing on behalf of his principal, induces one of the insurer's customers to believe that a strict compliance with the terms of his contract as to time or place of payment will not be required to be complied with, it will amount to a waiver of that provision of the policy. *Society* v. *McGregor*, 7 Ky. Law Rep. 750; *Mudd* v. *Insurance Co.* (Ky.), 56 S. W. 977."

MORTGAGES FOR PRESENT CONSIDERATION—VALIDITY.—An important ruling is that *In re Soudan Mfg. Co.* (C. C. A.), 113 Fed. 804. A mortgage for money borrowed without previous business relations between the parties to meet pressing current demands was executed August 1, 1900, and duly recorded prior to August 10, 1900, when an involuntary petition in bankruptcy was filed against the corporation. *Held*, reversing the order below, that under section 67d of the Bankrupt Act of 1898, providing that "liens given or accepted in good faith and not in contemplation of, or in fraud upon this act, and for a present consideration, shall not be affected by this act," the mortgage is valid, and to establish its invalidity, insolvency of the mortgagor must be proved, and also knowledge of such insolvency by the mortgagee, and that both borrower and lender intended to effect a preference or otherwise violate this statute.

Per Seaman, District J.:

"The validity of this security, however, does not depend upon the solvency of the borrower, or upon notice, actual or constructive, of its financial condition. The policy of the bankrupt law respecting liens for a present consideration differs radically from its treatment of preferences generally, or security for an existing indebtedness. While a preference is voidable (vide section 60b) when accepted with 'reasonable cause to believe it was intended thereby to give a preference,' and liens or security given to creditors within four months are declared void (section 67c, e, f), irrespective of notice, the provision which governs this case (section 67d) makes good faith on the part of the appellant the

sole test. In the bankruptcy act of 1867 no express provision appeared for this class of security, but in *Tiffany* v. *Institution*, 18 Wall, 375, 388, 21 L. Ed. 868, the doctrine applicable to security given upon a present consideration was thus stated:

"'There is nothing in the bankrupt law which interdicts the lending of money to a man in Darby's condition [an insolvent], if the purpose be honest, and the object not fraudulent. And it makes no difference that the lender had good reason to believe the borrower to be insolvent, if the loan was made in good faith, and without any intention to defeat the provisions of the bankrupt act. It is not difficult to see that in a season of pressure the power to raise money may be of immense value to a man in embarrassed circumstances. With it he might be saved from bankruptcy, and without it financial ruin would be inevitable. If the struggle to continue his business be an honest one, and not for the fraudulent purpose of diminishing his assets, it is not only not forbidden, but is commendable.'

"And it was thereupon held, in conformity with the rule in England, 'that advances may be made in good faith to a debtor to carry on his business, no matter what his condition may be, and the party making these advances can lawfully take security at the time for their repayment.' See 8 Notes on U. S. Reports, 190, citing cases which follow this rule; also the same case, before Dillon, circuit judge, and Treat and Krekel, district judges, under the title of *Darby* v. *Institution*, 1 Dill. 141, Fed. Cas. No. 3,571. In accordance with the view so held, the act of 1867 was subsequently amended to provide that nothing in section 35 of the act (section 5128, Rev. St.) 'shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of making such loan.' 18 Stat. pt. 3, ch. 390, sec. 11. The like provision in the present act was obviously framed in the same view, and the rule so stated is equally applicable. *In re Wolf*, 98 Fed. 84, 3 Am. Bankr. R. 555; *In re Davidson*, 109 Fed. 882, 5 Am. Bankr. R. 528. We are of opinion, therefore, that the appellant's security is not invalid under the provisions of the bankruptcy act."

ATTORNEYS — UNPROFESSIONAL CONDUCT — DISBARMENT — PRACTICE.—In a proceeding by the people in the Supreme Court on the relation of the Colorado Bar Association, against the respondent for his disbarment, it was *Held*, that the petition need not be verified by affidavit. *People* v. *Mead* (Col.), 68 Pac. 241.

Per Campbell, C. J., distinguishing *Ex Parte Burr*, 9 Wheat. 529: "Undoubtedly, the general and better rule is that such charges should be under oath, but the practice hereinbefore indicated has grown up in this jurisdiction. And where the rule is strictly enforced—as it is here—that respondent must be duly notified and given full opportunity to defend, and the charges, even on default, must be made out by clear, convincing, and satisfactory evidence before an attorney is disbarred, we think his rights are amply protected, even though the charges in the first instance are not under oath. The standing of the bar association, and the requirement that the information be signed and presented by, and the proceeding be under the supervision of, the attorney general, who sustains such intimate relations with the court, are sufficient safeguards to prevent